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No. 1098

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

Potomac Cooperators, Inc. and
Alexander Hassan,

Petitioners,

v.

American Security & Trust Company,
Trustee in Reorganization of
Parkwood, Inc.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Potomac Cooperators, Inc. and Alexander Hassan petition for a Writ of Certiorari to review the Order of the United States Court of Appeals for the District of Columbia Circuit entered in this cause on December 2, 1968.

OPINION BELOW

The Order of the Court of Appeals is an unreported per curiam Order. (Appendix)

JURISDICTION

The Court of Appeals Order was entered on December 2, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The District Court had jurisdiction under 11 U.S.C. § 11(a)(2).

QUESTION PRESENTED

Whether a Court of Bankruptcy is powerless to apply the doctrine of abstention and to remit fundamental first impression questions of state law to a state court merely because the question arises in proceedings pursuant to a Bankruptcy Trustee's objection to a proof of claim under Section 196 of the Chandler Act.

STATUTE INVOLVED

Section 196 of the Chandler Act, 11 U.S.C., § 596, 52 Stat. 893 provides as follows:

> "After the approval of the petition the judge shall prescribe the manner in which and fix a time within which the proofs of claim of creditors and of the interests of stockholders may be filed and allowed. Objections by any party in interest to the allowance of any such claims or interests shall be heard and summarily determined by the Court."

STATEMENT

This is a proceeding in the United States District Court sitting as a Court of Bankruptcy for the reorganization of Parkwood, Incorporated and other related corporations under Chapter X of the Bankruptcy Act.

Petitioners each filed timely proofs of claim as secured creditors of Parkwood, Inc.[1] Petitioner Potomac is the

[1] Petitioner Hassan's proof of claim was also filed against a second tier subsidiary of Parkwood, Franconia Industrial Park, Inc. (R. par. 1, Ex. 2).

holder of a deferred purchase money deed of trust on property in Maryland which it sold to Parkwood and Petitioner Hassan is the holder of a deferred purchase Money deed of trust on property in Virginia which he sold to Parkwood. (R. par. 1, Ex. 1).[2]

On May 1, 1968 the Trustee filed its objections to both Petitioners' claims. It alleged that under Maryland law an affidavit of true and bona fide consideration was required to be affixed to Petitioner Potomac's deed of trust and that under Maryland law the absence of an affidavit rendered the deed void as to a Trustee in Bankruptcy. The Trustee alleged that Petitioner Hassan's deed of trust was notarized by an improper party, one of the two trustees named in the deed, and is considered void and unrecorded under Virginia law. (R. par. 1, Ex. 3).

Both Petitioners promptly filed on May 14, 1968 Petitions for an Order of Abstention asking the Referee to remit these basic and unsettled state law questions raised by the Trustee to state courts to allow those courts the opportunity to pass on the first impression questions involved. (R. par. 2, Ex. 4).

The Trustee opposed the Petitions in the District Court principally on the basis that "This Court does not have the authority to 'abstain'." (R. par. 2, Ex. 5, p. 3). The Trustee's position was based on the language of Section 196 of the Chandler Act and the Trustee contended "This Section requires the Court to exercise its jurisdiction and removes from it, with respect to objections to proofs of claim, the discretion allowed Federal Courts in other circumstances." (R. par. 2, Ex. 5, p. 3).

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[2] The parties filed an Agreed Statement of Record on Appeal consisting of 7 paragraphs to which 13 Exhibits are attached. Citations to "R" refer to the Agreed Statement. Citations to the documents filed in the Court of Appeals will refer to the document by title.

The Referee denied the Petition. The District Court affirmed. (R. pars. 3 and 4).

Petitioners appealed to the Court of Appeals and the Trustee filed a Motion for Summary Affirmance which was granted by the Court of Appeals on December 2, 1968. (Appendix).

REASONS FOR GRANTING THE WRIT

This case presents a novel question of major significance in the interpretation of the Bankruptcy Act which has not been but should be decided by this Court.

The Court of Appeals granted summary affirmance in response to a contention that a Bankruptcy Court lacks the power to order abstention and to permit resolution of undecided state law questions by state courts.

The Trustee's position that a Bankruptcy Court has no power to abstain is apparently based solely on the use of the word "shall" in Section 196 of the Bankruptcy Act. It could cite to the Court of Appeals no authority either primary or secondary, nor could it offer any legislative history to support its challenge to this Court's doctrine of abstention. The Trustee contended only that Section 196 absolutely forbids a federal court to remit to a state court a state law question if it relates to a Trustee's objection to a proof of claim simply because Section 196 provides that objections to proofs of claim "shall be heard and summarily determined by the Court." 11 U.S.C. § 596.

The Trustee argued that "Section 196 prevents the Bankruptcy Court from declining jurisdiction."[3] However, abstention is not a refusal or abdication of jurisdiction. Jurisdiction to allow or disallow a proof of claim remains at all

[3] Memorandum in Support of Appellee's Motion for Summary Affirmance, p. 4.

times with the Bankruptcy Court and only the state law questions are decided by the state court.

Rather than a jurisdictional contest, the doctrine of abstention has long been an important judicial prerogative and an essential tool of comity between federal and state courts. This Court long ago, in *Thompson* v. *Magnolia Petroleum Company*, 309 U.S. 478 (1940) reversed a lower court's refusal to permit abstention in a bankruptcy case, stating that abstention can and should be granted in appropriate cases by a Bankruptcy Court. See also *Ex Parte Baldwin*, 291 U.S. 610 (1934).

In *Thompson* this Court recognized the Bankruptcy Court's exclusive control over the bankrupt estate, but ruled that despite that exclusive control "the exercise of that control may, where the interests of the estate and parties will best be served, lead the bankruptcy court to consent to submission to state courts of particular controversies involving unsettled questions of state property law and arising in the course of bankruptcy administration." 309 U.S. at 483.

The Court of Appeals' Order of December 2, 1968 is the only ruling to Petitioner's knowledge holding the above doctrine inapplicable to bankruptcy proceedings relating to objections to a proof of claim.

By contrast, this Court has often held in bankruptcy cases that the failure to permit abstention under appropriate circumstances is an abuse of discretion. For example, the failure of a Bankruptcy Court to permit a state court to decide title to oil in the Trustee's possession was held an abuse of discretion and abstention was ordered by this Court in *Texas* v. *Donoghue*, 302 U.S. 284 (1937). The failure of a Bankruptcy Court to abstain to permit a separate plenary suit for damages against an insured bank-

rupt was also held an abuse of discretion in *Foust* v. *Munson Steamship Lines*, 299 U.S. 79 (1936).

Here also the Bankruptcy Court's refusal to remit the case to the state court for decision constituted an abuse of discretion and the Court of Appeals' "summary affirmance" constitutes a hastily considered endorsement of the proposition that a federal court is powerless to apply the abstention doctrine to a question arising in the course of a Trustee's objection to a proof of claim.

Although the Trustee urged alternative grounds for its opposition to abstention claiming that, in any event, the state law questions did not justify abstention, the Trustee did not brief or argue the status of state law before the Bankruptcy Court or the Court of Appeals. Such questions, of course, go to the merits of the appeal, but the Court of Appeals responded to the Trustee's claim that the court lacked power to order abstention and dismissed the appeal by summary affirmance on Motion of the Trustee without permitting the filing of Briefs on the merits. The Court of Appeals thus failed to consider the abuse of discretion by the Bankruptcy Court.

The Bankruptcy Court was presented with an objection by the Trustee to the secured status of Petitioner Potomac on the sole ground that its deferred purchase money deed of trust, which was in all other respects validly and properly recorded, was void as to the Trustee because it did not have affixed to it an affidavit that the consideration recited in the deed was true and bonafide.[4]

There is no suggestion by the Trustee that the consideration was not in fact true and bona fide as, indeed, there could not be since the deed was given to Petitioner to

[4] The asserted statutory requirement for the affidavit is Art. 21, § 30, Maryland Code Anno. (1957).

secure the unpaid balance of the purchase price owed by Parkwood to Petitioner on the arm's length sale to Parkwood of Petitioner's interest in property in Maryland. The Trustee relies solely on an alleged formalistic defect in the Deed which would not have invalidated the deed as to Parkwood itself.

The unsettled questions and the questions of first impression under state land law which require abstention in this case are numerous. The Trustee itself has claimed that the federal court is not bound by the decision in the most recent case decided by the Maryland Court of Appeals (*Pagenhardt* v. *Walsh*, 250 Md. 333, 243 A. 2d. 494, decided June 28, 1968) where a deed of trust lacking the affidavit was held good as against a bankruptcy trustee and all others except certain listed creditors who had no actual notice of the deed.

Moreover, a Maryland curative statute (Art. 21, § 99, Md. Code Anno. (1957)) which validates deeds of trust containing defects in their form has yet to be construed in a case involving the absence of an affidavit of consideration. Here, also, the Trustee contends that the statute is not applicable, but since the question is one of first impression, cites no Maryland authority.

Any decision on the applicability of this statute or the effect of its operation potentially affects every deed, mortgage, deed of trust and certificate on record in the State of Maryland.

Such fundamental questions of state land law[5] involv-

[5] Additional unsettled questions under Maryland law which this case presents are: whether an affidavit is required to be attached to deferred purchase money deeds of trust such as Potomac's or only to deeds of trust given to a third party to secure a loan; and whether any defect in the deed of trust was cured when Potomac re-recorded the deed of trust with an affidavit. Neither of these questions appears to have been decided by the Maryland courts.

ing a largely untested Maryland statute should, on grounds of comity, be decided by the state courts rather than by a federal court which can only predict the law of the state. *Railroad Commission* v. *Pullman Company*, 312 U.S. 496 (1941).

The Trustee's objection to Petitioner Hassan's proof of claim likewise alleges a highly formalistic defect. It challenges the validity of Petitioner Hassan's deferred purchase money deed of trust on the grounds that the notary who witnessed Parkwood's signature on the deed of trust was also named as one of the two trustees in the deed. It argues that the notary, therefore, had an interest in the deed and his notarization was ineffective and the recordation of the deed is thus a nullity. Though it relates to formalities, the resolution of this issue raises serious questions under Virginia's common law doctrine of instantaneous seisin[6] and questions whose resolution will determine the validity or invalidity of numerous Virginia deeds of trust.

Also presented by Petitioner Hassan's case is the question whether the existence of a co-trustee or the right to substitute trustees eliminates the notarization problem and whether the Virginia curative statute (Section 55-125, Virginia Code Anno. (1950)) cures a defect of this sort. These, too, are seriously disputed and unsettled questions of Virginia law.

The abstention requests of both Petitioners present a significant common question to this Court because of the hypertechnical character of the Trustee's objections to their

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[6] The Virginia Supreme Court has held that even an unrecorded deferred purchase money deed of trust (to which the Trustee likens Petitioner Hassan's recorded deed of trust) is superior in Virginia to a subsequent judgment creditor and a subsequent mortgage recorded prior to the recording of the deed of trust under Virginia's doctrine of transitory seisin. *Charlottesville Hardware Co., Inc.* v. *Perkins*, 86 S.E. 869 (Va. 1915).

validly recorded deeds of trust. There is no question in both cases that the deeds are valid in all other respects. Nor is there any doubt that the bankrupt itself could not have challenged the deeds. They are clearly valid as between the parties. An adverse decision to Petitioners' claims will deprive them of their property on the basis of technicalities having no relation to the validity of the claim, the validity of the deed, or its effectiveness as recorded to impart actual notice to others. Under these circumstances such a decision would deprive Petitioners of their property without due process of law and would unreasonably abridge their freedom of contract.

Such constitutional questions may well be avoided by the construction of the state statutes as contended by these Petitioners. Abstention serves a valid purpose in permiting state courts to have the opportunity to construe basic and far reaching state statutes in such a way as to eliminate any constitutional infirmity. *Harrison* v. *N.A.A.C.P.*, 360 U.S. 170 (1959).

And contrary to the Trustee's own interest, federal courts have no need to protect an interest of the federal sovereign in questions such as those presented here. But the states involved have a very critical interest in forging the law of land titles and recordation in which each decision may affect rights in and title to the land of that state and may inadvertently revolutionize real estate practices in the state.

For a federal court to deny the states the right to rule on questions such as these results in the "needless friction"[7] abstention was created to avoid.

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[7] See *Louisiana Power and Light Company* v. *Thidodaux City*, 360 U.S. 25 (1959), dissenting opinion.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,390 — September Term, 1968
In the Matter of — Bankruptcy 46-66
Franconia Industrial Park, Inc.,
Appellant.

No. 22,391
In the Matter of — Bankruptcy 39-66
Parkwood, Inc.,
Appellant.

No. 22,392
In the Matter of Parkwood, — Bankruptcy 39-66
Inc., Franconia Industrial Park, Inc.,
Appellants.

Before: Bazelon, Chief Judge; and Leventhal and Robinson.

ORDER

These causes came on for consideration on appellee's motion for summary affirmance and the Court heard argument of counsel.

Upon consideration thereof, it is

ORDERED by the Court that appellee's aforesaid motion be granted and the judgments of the District Court appealed from herein are hereby affirmed.

Per Curiam.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 1098

POTOMAC COOPERATORS, INC. and ALEXANDER HASSAN,

Petitioners,

v.

AMERICAN SECURITY & TRUST COMPANY,
Trustee in Reorganization,

Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

American Security & Trust Company, Trustee in Reognanization of Parkwood, Incorporated, hereby opposes the petition of Potomac Cooperators, Inc. and of Alexander Hassan for a Writ of Certiorari to review the Order of the United States Court of Appeals for the District of Columbia Circuit entered in this cause on December 2, 1968.

OPINIONS BELOW

In addition to the Order of the Court of Appeals of December 2, 1968, set out in Petitioners' Appendix, this cause has been considered in a 17-page memorandum of the Referee in Bankrtupcy, two Orders of the District Court (filed July 5 and September 5), and one further Order of the Court of Appeals (filed January 13, 1969)—all of which are unreported but which are set out in the Appendix to this Opposition.

QUESTION PRESENTED

Whether the Bankruptcy Court abused its discretion in denying Petitioners' request to abstain from deciding questions of state law raised by objections of the Trustee in Reorganization to the proofs of claim filed by Petitioners.

STATEMENT

On May 1, 1968, Respondent, the Trustee in Reorganization of Parkwood, Incorporated, and its affiliated corporations under Chapter X of the Bankruptcy Act, filed objections to proofs of claim filed in the proceeding by a number of creditors. Two of the proofs of claim objected to were those of Petitioners Potomac Cooperators, Inc. and Alexander Hassan. By their proofs of claim, Potomac Cooperators, Inc. and Hassan had asserted that they were creditors of Parkwood, Incorporated, and that the debts claimed by them were secured by deeds of trust on real property of Parkwood located in Maryland and Virginia. Invoking the rights granted it by Section 70 of the Bankruptcy Act (11 U.S.C. §110), made applicable to Chapter X proceedings by § 102 (11 U.S.C. § 502), the Trustee asserted that the deeds of trust were defectively executed under state law and were invalid against the Trustee under §70.

On May 14, 1968, Petitioners filed their Petitions for an Order of Abstention. On May 20, 1968, the Referee, in the

exercise of his discretion, denied their request, ruling that there was nothing unusual involved in the Trustee's objections, that it was common for Federal Bankruptcy Courts to decide matters of state law raised by objections to proofs of claim, and that abstention would hinder, delay, and interfere with the reorganization proceeding.

On May 29, 1968, Petitioners filed petitions for review of the Referee's Order. The Honorable Oliver Gasch, United States District Judge, considered the matter, heard oral argument, and on July 5 denied the petition for review on the ground that abstention "is neither required nor justified." On July 26, Petitioners filed motions to amend the Order of July 5 to include within it the statement required under 28 U.S.C. §1292(b) to bring an interlocutory appeal to the Court of Appeals under that Section, and for a stay. By Order of September 5, Judge Gasch denied these motions too, stating that the motions did "not indicate the nature of the controlling question of law as to which there is a substantial ground for difference of opinion; and it appearing to the Court, in its discretion, that, rather than materially advancing the ultimate termination of the litigation, the granting of such Motion[s] would delay and protract the litigation . . . ."

Undaunted, however, Petitioners took their interlocutory appeal to the Court of Appeals. Respondent thereupon moved for summary affirmance on the ground that Petitioners' appeal presented no substantial issue and that timely termination of the reorganization proceeding required a speedy determination of the appeal. Petitioners and Respondent filed briefs on the issue of abstention, oral argument was held, and on December 2, 1968, the Court of Appeals granted Respondent's Motion for Summary Affirmance.

Petitioners make two statements about the proceeding in the Court of Appeals which, if Respondent understands them correctly, are inaccurate. First, Petitioners state (Petition p. 6) that the Court of Appeals granted summary

affirmance on motion of Respondent "without permitting the filing of Briefs on the merits. The Court of Appeals thus failed to consider the abuse of discretion by the Bankruptcy Court."[1] But on the contrary, both Petitioners and Respondent filed briefs in the Court of Appeals and presented oral argument, and the main theme of both the briefs and the argument was whether the District Court had properly exercised its discretion. Second, Petitioners state (Petition p. 5) that the Court of Appeals held inapplicable the doctrine of *Thompson v. Magnolia Petroleum Company*, 309 U.S. 478 (1940), an opinion which reviewed a Bankruptcy Court's exercise of the discretion to abstain. The Court of Appeals made no such holding, however, as a glance at its Order of December 2 will indicate; on the contrary, it reviewed and affirmed the Bankruptcy Court's refusal, in the exercise of that Court's discretion, to abstain.

On December 19, 1968, Petitioners moved for a stay of the mandate pending application to this Court for a Writ of Certiorari; on January 13, 1969, the Court of Appeals denied the stay. The cases were thereupon returned to the Referee in Bankruptcy for consideration on the merits, and on February 18, 1969, argument was held before the Referee on cross-motions for summary judgment on the Trustee's objection to the claim of Potomac Cooperators. Decision on these cross-motions is currently pending.

Petitioners' efforts for abstention and their interlocutory appeals from denial of abstention have substantially delayed

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[1] The Court of Appeals did not prevent Petitioners from arguing the "merits"; in fact, Petitioners attempted to demonstrate the Bankruptcy Court's abuse of discretion by discussing elements of the law underlying Respondent's objections to their claims. It should be remembered, moreover, that it was Petitioners, not Respondent, who brought the interlocutory appeal on the issue of abstention before the Referee had passed upon the merits of the objection to Petitioners' claims (and which he has not yet done as of the time of this Opposition).

consideration of the merits of Respondent's objections. Despite the fact that the Referee in Bankruptcy, the District Judge, and the Court of Appeals have each demonstated their awareness of the need for speed in the reorganization proceeding, have ruled that abstention would slow the reorganization proceedings, and have recognized that the pendency even of the petition for abstention has delayed consideration of the merits of Respondent's objections, and despite the fact that the Referee—after nine months of delay occasioned by the petition for abstention and interlocutory appeals from the denial of the petition—finally has been presented (on summary judgment) the merits of the Respondent's objections to the claim of Potomac Cooperator's, Petitioners bring a Writ of Certiorari to this Court to review an interlocutory appeal.

REASONS FOR DENYING THE WRIT

The question presented is not, as Petitioners have stated, whether a Bankruptcy Court has the power to abstain from deciding questions of state law raised by objections to proofs of claim. The question is, as previously stated herein, simply whether the Bankruptcy Court abused its discretion in refusing to abstain in this particular case. Respondent submits that this is not a substantial Federal issue of general interest and that this Court should not waste its energies and resources by considering the case.

It is true that Respondent urged each of the Courts below that Section 196 of the Bankruptcy Act (11 U.S.C. § 596), which provides that objections to proofs of claim "shall be heard and summarily determined" by the Bankruptcy Court, removes from the Court the power to abstain. But Respondent also argued that if the Bankruptcy Court did have the power to abstain it should not do so on the facts of this case, because: (1) abstention is a question which "involves and depends upon the exercise of a sound judicial discretion," *Redmond v. United Funds Management Corp.*, 144 F.2d 155, 158 (8th Cir.), *cert.*

denied, 323 U.S. 776 (1944); 1 *Collier on Bankruptcy* ¶ 2.07; (2) a Court should abstain only in exceptional cases which present special reasons for doing so, *Meredith v. Winter Haven,* 320 U.S. 228, 234 (1943); *Mangus v. Miller,* 317 U.S. 178, 186 (1942); 1A *Moore's Federal Practice,* ¶ 0.203 [2], p. 2117; 1 *Collier on Bankruptcy,* ¶ 2.07; (3) a Court would abuse its discretion if abstention would delay or hinder the reorganization proceeding, *Foust v. Munson Steamship Lines,* 299 U.S. 77, 87-88 (1936); and (4) Petitioners' request for abstention failed under both these tests–since it presented no special circumstances but would, if granted, delay and hinder the reorganization proceeding.

The Courts below did *not* rule in favor of Respondent on the ground that the Bankruptcy Court lacked the power to abstain; instead, they considered the request for abstention as a matter for the Bankruptcy Court's discretion. In the only full opinion filed in the case, the Referee ruled that he had discretion to abstain but that he did not consider the circumstances of the cases to warrant abstention. Applying the standards which have been developed to guide the exercise of discretion to abstain, the Referee found that Respondent's objections to the claims of Petitioners presented no exceptional circumstances but that, on the contrary, since "the question of the validity of a security instrument [involving state law] is one that rises with marked frequency in a bankruptcy proceeding," the problems raised by the Respondent's objections are "common." (Memorandum Opinion, pp. 15, 16) Additionally, the Referee ruled that "Any action whereby the complete control of administrative proceedings is lost to the Bankruptcy Court, is an action which would unnecessarily hinder, delay and interfere with the consideration of a Plan of Reorganization, and the continued orderly progression of this reorganization proceeding." (Memorandum Opinion, p. 16). The Referee, therefore, considered Petitioners' request for abstention a matter for the exercise of his discretion, utilized the two standards which have been enunciated for the exercise of this discretion, and found that abstention would violate both such standards. He refused, therefore, to abstain.

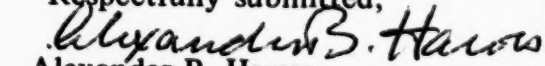
The District Judge affirmed this ruling, stating in his Order of July 5, 1968, that "Abstention is neither required nor justified." And the Court of Appeals summarily affirmed the District Judge's affirmance of the Referee. Therefore, while Respondent continues to hold the position that §196 prevents the Bankruptcy Court from abstaining, the Courts below did not accept that theory but instead considered that the Bankruptcy Court had the discretion to abstain. The Referee decided he would not abstain; the District Court agreed that the case did not warrant abstention; and the Court of Appeals summarily affirmed the judgment of the District Court.

Consequently, if *certiorari* were granted, the sole ground Petitioners could urge to this Court for reversing the lower courts would be that the Bankruptcy Court *abused* its discretion in declining to abstain in this particular case—the quintessence of an issue that does *not* present a substantial Federal question.

CONCLUSION

Respondent submits that by their Petition for Certiorari Petitioners seek this Court's review of a Bankruptcy Court's exercise of discretion, that this does not present any substantial Federal issue, and that the Petition should, therefore, be denied and dismissed.

Respectfully submitted,



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APPENDIX

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Bankruptcy Court

In the Matter of A Chapter X Proceeding

PARKWOOD, INCORPORATED Bankruptcy No. 39-66
FRANCONIA INDUSTRIAL PARK, INC. No. 46-66

MEMORANDUM OF REFEREE IN BANKRUPTCY

(Petitions of Potomac Cooperators, Inc., and Alexander Hassan for an Order of Abstention Granting Petitioners Leave to File Suits in Maryland and Virginia State Courts to Declare the Validity of Deeds of Trust on Property of Parkwood, Inc., in Those States)

The question presented for consideration by the separate petitions of Potomac Cooperators, Inc., and Alexander Hassan is: Should this Bankruptcy Court enter an order of abstention granting leave to each of petitioners to file an action in the State Courts of Maryland and Virginia, respectively, to obtain a declaration of the validity, under the respective state laws, of each of their deeds of trust, and postponing any hearing in these proceedings to the validity of the deeds of trust pending the outcome of said actions in the State Courts?

POTOMAC COOPERATORS, INC

Potomac Cooperators, Inc., filed its proof of claim with the Trustee on October 18, 1966 alleging that Parkwood, Incorporated, was indebted to it in the sum of $195,296.04, secured by a Deferred Purchase Money Second Deed of Trust on land in Beltsville, Prince George County, Maryland.

[2] The Trustee objects to the allowance of this claim as a secured claim on the following grounds:

"a. Under the laws of Maryland and Section 70 of the Bankruptcy Act, the deed of trust (is) invalid against the Trustee;

"b. Under the laws of Maryland and Section 60 of the Bankruptcy Act, the deed of trust (is) voidable by the Trustee because (it is a) transfer of the debtor's property on account of an antecedent debt made immediately prior to the filing of the petition initiating this proceeding while the debtor was insolvent and claimant(s) had reasonable cause so to believe, the effect of which would be to enable claimant(s) to obtain a greater percentage of (its) debts than some other creditor of (its) class."

In its memorandum of points and authorities in support of, and filed with, its objections to said claim, the Trustee, inter alia, refers to Maryland Code, Article 21, Section 30, reading as follows:

"No mortgage or deed of trust shall be valid except as between the parties thereto, unless there be endorsed thereon an oath or affirmation of the mortgagee or the party secured by a deed of trust that the consideration recited in said mortgage or deed of trust is true and bona fide as therein set forth."

ALEXANDER HASSAN

Alexander Hassan filed his proofs of claim with the Trustee on October 25, 1966 in both the Parkwood, Incorporated proceeding and the Franconia Industrial Park, Inc., proceeding, alleging that each was indebted to him in the sum of $276,408.49, plus interest, secured by a First Deed of Trust on land in Fairfax County, Virginia.

The Trustee objects to the allowance of this claim as a secured claim "for the reason that the certificate of acknowledgment of the [3] grantor's signature on the deed of trust is invalid and the recordation of the deed of trust is therefore ineffective against the Trustee, under the laws of Virginia and Section 70 of the Bankruptcy Act."

In its memorandum of points and authorities in support of, and filed with its objections to said claims, the Trustee, inter alia, refers to §55-106 and other sections of the Virginia Code.

PETITIONS FILED BY CLAIMANTS

Both Potomac Cooperators, Inc., and Alexander Hassan have filed their separate petitions herein for an order of abstention granting leave to each of them to file an action in the State Courts of Maryland and Virginia, respectively, to obtain a declaration of the validity under the respective state laws of their deeds of trust, and postponing any hearing in these proceedings relating to the validity of each of their deeds of trust pending the outcome of said actions.

Each of these petitioners-claimants allege, inter alia, that:

(a) Under applicable Federal law, the decision of this Court with respect to the validity as to third parties of petitioners' deed of trust is governed by the law of Maryland and Virginia, respectively.

(b) The deeds of trust are and were valid as to third parties under the laws of Maryland and Virginia, respectively, at the time they were filed, and alternatively that any defect that may have existed under the law of either state was cured by the curative statutes of that state.[1]

(c) Any construction of the law of either of these States regarding the filing requirements of deeds of trust which would have the effect of invalidating either [4] deed of trust as to third parties would constitute a deprivation of property of either petitioner without due process of law in violation of the United States Constitution.

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[1] As to Maryland only, that, alternatively, any defect which may have existed or continued is considered under Maryland law to have been cured ab initio by the re-recording of said deed with affidavit of true and bona fide consideration.

(d) Since the objection of the Trustee to the claim of both petitioners turns on a question of state law as to the status of which there is serious dispute; since the question involved will have a fundamental and profound impact upon the basic land law in both Maryland and Virginia and upon the practices and procedures to be followed by attorneys, real estate brokers and the administration of state and local government recording offices; and since both Maryland and Virginia statutes are susceptible of a reasonable interpretation which would avoid a serious question of their constitutionality under the United States Constitution, there are, therefore, present in this case special circumstances which require that this Court abstain from deciding questions of both Maryland and Virginia state laws raised by the Trustee's objections and that both petitioners-claimants be granted leave to file an action in the state courts of Maryland and Virginia to resolve these issues.

TRUSTEE'S OPPOSITION AND HEARING

The Trustee formally opposed the petitions of Potomac Cooperators, Inc., and Alexander Hassan, and the matters came on for argument on May 16, 1968, at which time the petitioners-claimants' and the Trustee's counsel were heard at length, and the position of the Securities and Exchange Commission and the Secured Noteholders Committee, both in opposition to the petitions, were made known by their counsel.

Points and authorities were filed on behalf of the petitioners-claimants and the Trustee. The proceedings at the hearing were reported and are fully set forth in the transcript filed in this proceeding.

[5] PRESENT STATUS OF CHAPTER X PROCEEDING

This Chapter X proceeding has now reached the point where dates have been fixed by the Judge for the classification of creditors, valuation of assets, submission of proposed

plans for reorganization to the Trustee, and the disposition of other preliminary matters leading to the submission of a Plan for Reorganization by the Trustee, a hearing thereon before the Special Master on September 10, 1968, and the Special Master submitting his Report thereon to the Judge on, or before, October 10, 1968.

Among the preliminary matters to be disposed of before a classification of creditors can be approved by the Judge is the allowance or disallowance of claims filed by creditors, including a determination of whether such claims are secured, unsecured, liquidated or unliquidated, contingent or disputed. An approved classification of creditors is an essential requirement before a Plan of Reorganization can be considered for approval by the Judge.

PURPOSE OF OBJECTIONS TO CLAIMS

The purpose of an objection to a claim filed by a creditor is to determine whether or not it is a claim arising out of an obligation of the bankrupt or debtor and whether or not it is allowable under the pertinent provisions of the Bankruptcy Act. In the event the claimant asserts security or lien rights, then the purpose of the objection is also to to determine whether or not the requirements of the Bankruptcy Act and the Federal or State laws affecting the creation and/or validity of the security or lien have been met. In this connection the status of the Trustee in Bankruptcy under the provisions of the Bankruptcy Act becomes an important consideration.

[6] BASIC LAW INVOLVED

Although the petitioners-claimants do not challenge the jurisdiction or power of the Bankruptcy Court to ascertain the validity of their respective claims, it seems appropriate to set forth the basic authority for the same.

Section 196 of the Bankruptcy Act, being a part of Chapter X, provides the basic authority for the objections

to the claims and the Referee in Bankruptcy hearing the objections. Section 196 reads:

> "After the approval of the petition the judge shall prescribe the manner in which and fix a time within which the proofs of claim of creditors and of interests of stockholders may be filed and allowed. Objections by any party in interest to the allowance of any such claims or interests shall be heard and summarily determined by the court."

Section 1(9) of the Bankruptcy Act provides that "'Court' shall mean the judge or the referee of the court of bankruptcy in which the proceedings are pending."

The bankruptcy court has exclusive jurisdiction of *summary proceedings*. 1 Collier on Bankruptcy, 14th ed., p. 156. The allowance or disallowance of proofs of claim in bankruptcy is within the exclusive jurisdiction of the Bankruptcy Court. Bankruptcy Act, Sections 2(2) and 196.

The Supreme Court decisions have now made it clear that the Bankruptcy Court has power in the first instances to determine whether it has jurisdiction to proceed. Matter of Tax Service Assn. of Ill. (1938) 305 U.S. 160, 38 Am. B.R.(N.S.) 85, 83 L.ed 100; *Stoll v. Gottlieb* (1938) 305 U.S. 165, 38 AM.B.R.(N.S.) 76, 83 L.ed 104.

[7] A creditor who presents his claim as secured and thereby indicates his desire to avail himself of his alleged security and at the same time participate with other creditors as to a possible deficiency, opens himself to a preliminary investigation as to whether or not his security is valid. . . . Upon objections, these questions will be determined by the bankruptcy court, preferably prior to any valuation, particularly prior to conversion of the alleged security into money. 3 Collier on Bankruptcy, 14th ed., p. 302.

Where questions arise in a bankruptcy proceeding in which the rights of parties must be determined, in whole or in part, by the laws of a state, the Bankruptcy Court must interpret such laws in accordance with the precedents estab-

lished by the courts of such state. "In matters of lien law, the local law, established by decision of the courts of last resort of the state, shall have a controlling influence on the federal courts, and if a local law is expressed in sufficient clearness, the national courts will accept it, rather than form their own judgment. In re Seward Dredging Co., 242 F. 225, 155 C.C.A. 456." In re Franklin Garden Apartments, Inc., 40 F. Supp. 117, quoting from New York-Brooklyn Fuel Corp., 11 F.2d 802.

The jurisdiction of the bankruptcy court "is not limited to the administration of property which belongs without question to the bankrupt;" it also extends to the determination of questions of title. And this is true whether the bankrupt's property is situated within or without the district in which the court sits. Heffron v. Western Loan & Bldg. Co. (CCA-9) 31 Am.B.R.(N.S.) 489, 84 F.2d 301; Isaac v. Hobbs Tie & Timber Co., 282 U.S. 734, 75 L.ed. 645.

[8] "It is elementary that title to all the property of a bankrupt rests in his trustee . . . and the bankruptcy court has jurisdiction to decide all adverse claims to the property in the custody of the trustee, regardless of whether it is real estate situated in another district." Matter of Cohen (CCA-5 1939) 41 Am.B.R.(N.S.) 348, 107 F.2d 881.

Once acquiring proper possession of the bankrupt's property, the court is vested with exclusive jurisdiction, within the limits prescribed by the Bankruptcy Act, to determine all liens and interests affecting the estate, and to prevent, by proper orders, the doing of anything that will, at any stage of the proceeding, tend to embarrass the court in the equitable distribution of the estate of the bankrupt. Thus a proceeding to determine the right to property in the possession of the bankruptcy court is summary." 1 Collier on Bankruptcy, 14th ed., pp. 152-156.

THE LAW AS TO ABSTENTION

The petitioners chose to use the word "abstention" in connection with the subject now under discussion. The same subject has been termed, in bankruptcy proceedings, "renouncing of jurisdiction", "waiver of jurisdiction", "abdication of jurisdiction", "suspension of exclusive jurisdiction", and "surrender of jurisdiction", among others.

While "there is no power in the officers of a bankruptcy court to affect (the) exclusive jurisdiction of that court, whether by waiver, estoppel or laches" (Chicago, R.I. & P. Ry. Co. v. City of Owatonna, 46 Am.B.R.(N.S.) 235, 120 F.2d 226), the bankruptcy court itself may surrender to other courts, under proper circumstances, the determination of certain issues. Although the bankruptcy court has this power to renounce jurisdiction, the exercise of such power is discretionary. Redman v. United Funds Management Corp., (CCA-8 1944) 144 F.2d 155, cert. den. 1944.

[9] A court of bankruptcy in a reorganization proceeding is not required to suspend its exclusive and non-delegable control over administration of the estate to await the submission of a problem to a state court. In re Fine Arts Corp. v. Schmidt (CCA-6 1943) 136 F.2d 28. The bankruptcy court cannot surrender its exclusive control over matters of administration or confide them to another tribunal. National Bank of Commerce of Norfolk v. Council (Ill. 1950) 91 N.E.2d 66, C.C.H. Dec. para. 56,658.

Generally, jurisdiction of a bankruptcy court with respect to matters of bankruptcy is exclusive and cannot be relinquished to any other court. This is a necessary conclusion from an examination of the provisions of the Bankruptcy Act, and such proceedings include, among others, all matters of administration, such as the allowance, rejection, and reconsideration of claims, and the determination of the preferences and priorities to be accorded to them, when presented for allowance and payment in the regular course. 5A Remington on Bankruptcy §2384, p. 135.

A distinct purpose of the Bankruptcy Act is to subject the administration of estates of bankrupts to the control of tribunals clothed with authority and charged with the duty of proceeding to final settlement and distribution in a summary way, as are courts of bankruptcy. Creditors are entitled to have this authority exercised, and justly may complain when, as here, an important part of the administration is sought to be effected through the slower and less appropriate processes of a plenary suit in another court. A court of bankruptcy is not at liberty to surrender its exclusive control over matters of administration, or to confide them to another tribunal. United States Fidelity & Guaranty Co. v. [10] Bray, 225 U.S. 205, 56 L.ed 1055, 32 S.Ct. 620, 28 Am.B.R. 207, (1912), affg. Bray v. U.S. Fidelity & Guaranty Co., 170 F. 689, 22 Am.B.R. 363.

The jurisdiction in bankruptcy is made exclusive in the interest of the due administration of the estate and the preservation of the rights of both secured and unsecured creditors. This fact places it beyond the power of the court's officers to oust it by surrender of property which has come into its possession. Indeed, a court of bankruptcy itself is powerless to surrender its control of the administration of the estate. Isaacs v. Hobbs Tie and Timber Co., 282 U.S. 734, 75 L.ed 645, 51 S. Ct. 270, 17 Am.B.R. (N.S.) 273, (1931).

From the above quoted decision of the Supreme Court, it is apparent that where the bankruptcy court has custody or property or funds, it is, broadly speaking, the only court which can determine rights therein and cannot divest itself of the duty to do so. But in 1940 the Supreme Court somewhat restricted this view by its decision in Thompson v. Magnolia Petroleum Co., 309 U.S. 478, 84 L.ed 876, 60 S. Ct. 628, 42 Am.B.R.(N.S.) 216, wherein it said "A court of bankruptcy has an exclusive and non-delegable control over the administration of an estate in its possession. But the proper exercise of that control *may*, where the interests

of the estate and the parties will best be served, lead the bankruptcy courts to consent to submission to state courts of particular controversies involving *unsettled* questions of State property law and arising in the course of bankruptcy administration." (Emphasis supplied.)

An analysis of Thompson v. Magnolia Petroleum Company discloses that a far greater problem regarding land law was involved there, than is involved in the matter before this Court. There a trustee of a railroad in reorganization under Section 77 of the Bankruptcy Act asserted fee simple [11] ownership of the right of way lands with the consequent rights to reduce the underlying oil to possession. The opposing party denied the trustee's alleged title or that he had any interest in the land beyond a mere easement (a limited right to use the surface for railroad purposes only), and alleged that the ownership of the fee was in others from whom they had obtained oil leases. The determination of fee simple ownership could be decided only by interpretation, under Illinois law, of instruments granting the railroad its right of way. The question before the Supreme Court was whether the bankruptcy court (1) had summary jurisdiction to adjudicate ownership of the right of way lands, and (2) whether it abused its discretion in ordering the fugitive oil captured and its proceeds impounded pending adjudication of the ownership. The Supreme Court reached three conclusions:

1. Possession of the right of way lands under claim of fee simple ownership by the railroad and later by the trustee was an adequate basis for the District Court's summary jurisdiction.

2. It was not an abuse of discretion to authorize the trustee to protect all interests—so far as it appeared possible to do so—by preserving the oil, from waste and depletion, through its extraction and sale with the net proceeds to be impounded until final determination of the controversy over title to the right of way lands.

3. That a court of bankruptcy has an exclusive and non-delegable control over the administration of an estate in its possession. But the proper exercise of that control [12] *may*, where the interests of the estate and the parties will best be served, lead the bankruptcy court to consent to submission to State courts of particular controversies involving unsettled questions of State property law and arising in the course of bankruptcy administration.

Under the circumstances there existing, the Supreme Court concluded that it was desirable to have the litigation proceed in the State Courts of Illinois, and stated:

> "Decision with which the Federal court of bankruptcy is here faced calls for interpretation of instruments of conveyance in accordance with Illinois law. *Neither statute nor decisions of Illinois have been pointed to which are clearly applicable. And the difficulties of determining just what should be the decision under the law of that State are persuasively indicated by the different results reached by two Circuit Courts of Appeal that have attempted the determination.* Unless the matter is referred to the State Courts, upon subsequent decision by the Supreme Court of Illinois it may appear that rights in local property of parties to this proceeding have—by accident of Federal jurisdiction—been determined contrary to the law of the State which in such matters is supreme." (Emphasis supplied.)

"While such circumstances may, perhaps, be exceptional, they will occasionally arise. On the other hand, where it is clear that state court decisions have removed any determinative uncertainty as to the state rules applicable, say, in a property question, the parties should not be remitted to a state court for disposition of the controversy. To refer to the state court every land question arising in bankruptcy would be to disregard the very objectives of the summary jurisdiction granted to the bankruptcy court. *When no more uncertainty attends the disposition of a case* [13] *than is present in most legal controversies, the bankruptcy court may re-*

tain jurisdiction and dispose of the issues by ascertaining from all the available data what the state law is and applying it. . . . From these propositions, it is clear that the question of 'surrender' is ordinarily one for the bankruptcy court's discretion, to be exercised in the interests of the parties, the estate and the proceeding itself; but under certain circumstances the court may have what amounts to a duty to allow the litigation of a particular issue or controversy to proceed in some other forum and hence will commit an abuse of discretion in refusing." L. Collier on Bankruptcy, 14th ed., pp. 161-163

Where the matters in controversy are directly connected with the basic control of the bankruptcy court over the administration of the estate, such as determination of priorities, proof and allowance of claims, distribution of dividends and the like, there is no warrant for action in non-bankruptcy forums.

The actual test has come to be regarded as a practical one—whether a different court can more suitably handle the issues or grant appropriate relief, and, if so, will leaving limited issues to its determination unduly delay bankruptcy administration or cast a burden on the parties or the estate? 5A Remington on Bankruptcy §2384, p. 137.

In re Fine Arts Corp. 136 F.2d 28, 54 Am.B.R.(N.S.) 213, (CA Ohio 1943), affg. 48 F. Supp. 619, 50 Am.B.R. (N.S.) 249, the Court said: "The rule on which appellant relied has its limitations and cannot be invoked in every case involving title to real estate in bankruptcy reorganization proceeding. In re Chicago & N.W.R. Co., 7th Cir., 127 F.2d 1001, 49 Am.B.R.(N.S.) 365. If the record shows that the reorganization proceedings will be hindered, burdened or delayed by a proceeding [14] in the state court, the rule has no application. *Foust v. Munson S.S. Lines*, 299 U.S. 77, 81 L.ed 49, 57 S. Ct. 90, 32 Am.B.R.(N.S.) 171. Likewise, the exercise of the court's discretion in authorizing the parties to ascertain their respective rights by an

appropriate proceeding in the state court is to be invoked only under exceptional circumstances. *Mangus v. Miller*, 317 U.S. 178, 87 L.ed. 169, 63 S. Ct. 182, 51 Am.B.R. (N.S.) 136 [Reh den 317 U.S. 712, 87 L.ed 567, 63 S. Ct. 432]. As we view the facts, there are no exceptional circumstances here . . . .

"The desirability of having state pronouncement of local law on issues in bankruptcy proceedings where such law controls, must sometimes yield to the necessities of the case and often in bankruptcy reorganization proceedings, the purpose of the Act to promptly rehabilitate financially distressed corporations would be thwarted if resort was had to the state courts.

"According to the allegations of the present petition, the reorganization proceedings would be delayed and hampered if the trustee was required to proceed in the state court. It would result in the bankruptcy court retaining the shell and releasing the kernel of the controversy to the state court for final decision."

CONCLUSIONS

The last paragraph appearing above is equally applicable to the matter now under consideration. It is obvious from the language of the texts and decisions above referred to that a bankruptcy court, either in a liquidating bankruptcy or in reorganization or arrangement proceedings, where it has property in its custody, should itself determine all issues [15] presented or arising with respect to rights in or to such property unless there is some very good reason for leaving determination to a different court.

where the bankruptcy court actually has permitted controversies over property in its possession to be instituted or carried on elsewhere, sometimes without even discussing the propriety of so doing. Sometimes it has been pointed out that the particular suit will in no way conflict with the bankruptcy court's custody. Where certain types of questions or issues are involved, a different court may be considered better equipped to handle them, and most of the instances will be found to involve such matters as patent rights or admiralty law, dower rights, forfeiture of oil illegally produced to a state pursuant to state law, or mortgage of lien foreclosures involving complications or special relief or procedure. Other instances will be found wherein plenary suits, or proceedings in the nature thereof, in the same court, but as a federal district court rather than as a court of bankruptcy, have been encouraged or permitted.

There is no broad and general discretion in a court of bankruptcy to permit proceedings elsewhere in disregard of its custody over the property involved to go forward, or to give force to such proceedings by authorizing them.

The question of the validity of a security instrument is one that rises with *marked frequency* in a bankruptcy proceeding. The determination of the validity of such agreements requires the application of both state laws and the Bankruptcy Act. State laws to fix the ground rules by which the technical requirements for the instrument are to be judged, and [16] the Bankruptcy Act to determine the status of the trustee in bankruptcy and the claimant (or adverse party) in the application of such rules. Such problems are better resolved in Bankruptcy Courts than in state courts, inexperienced in bankruptcy matters.

There is nothing in the pleadings or the arguments of counsel which show that either Maryland or Virginia lack appropriate statutes to cover the problems here involved, insofar as state laws are concerned, or that the courts in either of these states disagree among themselves as to the intent and meaning of the statutes. To the contrary, the

points and authorities submitted clearly demonstrate that there are such statutes and that, for the most part, they have been subjected to judicial interpretation over a period of many years.

This Chapter X proceeding, including the proceedings of the subsidiary corporations, have now reached a point where a rigid schedule of activities must be maintained in order for the Special Master's hearing on a Plan of Reorganization to be held on September 10, 1968, and his report to be submitted to the Judge on, or before, October 10, 1968. Any action whereby the complete control of administrative proceedings is lost to the Bankruptcy Court, is an action which would unnecessarily hinder, delay and interfere with the consideration of a Plan of Reorganization, and the continued orderly progression of this reorganization proceeding.

There is nothing involved in this proceeding which creates an unusual problem such as that considered in *Thompson v. Magnolia Petroleum Company*. As a matter of fact, the probelms involved in these present proceedings are so common that to authorize abstention, would be to establish the absurd precedent that this Bankruptcy Court could not act on any [17] objection to a proof of claim asserting security under any agreement or instrument regulated by the Code of Laws for the District of Columbia until the Circuit Court of Appeals for the District of Columbia had interpreted such law, or laws, on the basis of the same facts and circumstances.

This memorandum shall comprise the findings of fact and conclusions of law in support of the order to be entered herein denying the petitions of Potomac Cooperator, Inc., and Alexander Hassan.

The Trustee, through his counsel, shall prepare and present an appropriate Order in conformity herewith prior to the hearing on the merits on May 21, 1968.

/s/ John A. Bresnahan
Referee in Bankruptcy

Dated May 20, 1968

ORDER

Upon consideration of the petitions of Potomac Cooperator, Inc. and Alexander Hassan, claimants in this proceeding, for an order of abstention granting petitioners leave to file suit in Maryland and Virginia state courts to declare the validity of deeds of trust on property of the debtors in those states, upon consideration of Memoranda filed by petitioners and by the Trustee, and having heard and considered oral argument in open court of counsel for petitioners, the Trustee, the Secured Noteholders Committee, and the Securities and Exchange Commission; and as is more particularly shown in the Memorandum of the undersigned dated May 20, 1968, it appearing that there are no exceptional circumstances which would warrant this Court to relinquish its jurisdiction to determine the validity of proofs of claim and objections thereto; and it further appearing that relinquishment of this Court's jurisdiction would hinder, burden, and delay these proceedings, it is, this twentieth day of May, 1968,

ORDERED:

That the petitions of Potomac Cooperators, Inc. and Alexander Hassan, be and hereby are denied and dismissed.

/s/ John A. Bresnahan
Referee in Bankruptcy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In the Matter of

PARKWOOD, INCORPORATED Bankruptcy No. 39-66

Debtor

ORDER

Petitioner Potomac Cooperators, Inc., having petitioned the Court for review of an Order of the Referee in Bankruptcy, dated May 20, 1968, denying Petitioner's Petition for an Order of Abstention; American Security & Trust Company, Trustee in Reorganization in the above-captioned proceeding, having opposed the Petition for Review; the Court having considered the pleadings and memoranda filed in support thereof and having heard oral argument in open court by counsel for Petitioner in support of said Petition for Review and by counsel for the Trustee in opposition thereto and by counsel for the Securities and Exchange Commission; and it appearing to the Court that an Order of Abstention is neither required nor justified, it is

ORDERED that the Petition for Review of Potomac Cooperators, Inc. be and hereby is denied and dismissed.

/s/ Oliver Gasch
United States District Judge

[Filed July 5, 1968]

[Identical Order entered dismissing Petition of Hassan.]

ORDER

Upon consideration of the motion of Petitioner Hassan and Potomac Cooperators, Inc., to amend this Court's Order dated July 5, 1968; this court having considered the pleadings, memoranda and oral argument in open Court by counsel for the Trustee and the Petitioner; it appearing to the Court that, although petitioners' motion under 28 U.S.C. §1292(b) and Rule 5(a) of the Federal Rules of Appellate Procedure is timely filed, that motion does not indicate the nature of the controlling question of law as to which there is a substantial ground for difference of opinion; and, it appearing to the Court, in its discretion, that, rather than materially advancing the ultimate termination of the litigation, the granting of such motion would delay and protract the litigation, it is by the Court this 5th day of September, 1968,

ORDERED that the motion of Petitioner Alexander Hassan, Et al., to amend Order dated July 5, 1968, to include statement under 28 U.S.C. §1292(b) and to stay proceedings be and the same hereby is denied and dismissed.

/s/ Oliver Gasch
United States District Judge

[Filed September 5, 1968]

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 22,390 September Term, 1968

In the Matter of
Franconia Industrial Park,
Inc.,
Appellant

Bankruptcy 46-66

No. 22,391

In the Matter of
Parkwood, Inc.,
Appellant

Bankruptcy 39-66

No. 22,392

In the Matter of Parkwood,
Inc., Franconia Industrial Park,
Inc.
Appellants

Bankruptcy 39-66

Before: Bazelon, Chief Judge; and Leventhal and Robinson.

ORDER

These causes came on for consideration on appellee's motion for summary affirmance and the Court heard argument of counsel.

Upon consideration thereof, it is

ORDERED by the Court that appellee's aforesaid motion be granted and the judgments of the District appealed from herein are hereby affirmed.

Per Curiam.

[Filed December 2, 1968]

[Caption omitted in printing]

ORDER

On consideration of the motion of appellants for stay of mandate pending application for certiorari, and of the opposition thereto filed by counsel for American Security and Trust Company, it is

ORDERED by the court that appellant's aforesaid motion is denied.

[Filed January 13, 1969]